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No. 84-1262

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

FEDERATION INTERNATIONALE DE BASKETBALL AMATEUR,
Petitioner,

v.

RONALD BEHAGEN,
Respondent.

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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In this Cause, Petitioner Federation Internationale de Basketball Amateur ("FIBA") seeks a writ of certiorari to the United States Court of Appeals for the Tenth Circuit. Petitioner asks review of a decision of the circuit court determining that it is subject to the *in personam* jurisdiction of the United States District Court for the District of Colorado.

For the reasons set out below, Respondent Ronald Behagen respectfully urges that the petition be denied.

INTRODUCTION

Respondent takes exception to the Question Presented for Review, as stated by Petitioner. Petition ("Pet."), p. i. Petitioner represents implicitly to this Court that it was held subject to jurisdiction in Colorado "for denying an athlete the right to play amateur basketball in Italy."

The holding of the court below, however, is not that the specific acts alleged in the complaint are the basis of jurisdiction. Rather, the court of appeals held, on the basis of the record, that Behagen had made "a prima facie showing that FIBA maintains continuous and substantial activity in Colorado." Pet., p. 6a. Jurisdiction is presumptively proper whatever the specific fact allegations that form the gravamen of the complaint.

Respondent therefore respectfully submits that the only proper question presented for review is the following: whether an international sports federation located in Germany, on these facts, maintains continuous and substantial activities in Colorado sufficient to found *in personam* jurisdiction in the courts of that State.

Respondent would also note that in numerous places in its Statement of the Case, FIBA presents as fact matters that are not established of record, and offers characterizations without basis in fact. Thus FIBA's description of its relationship with ABA/USA, its United States member and a defendant below, omits the numerous points of contact and overlapping and interlocking responsibilities of the two organizations. Pet., p. 4. The court of appeals cited some of these in its opinion. Pet., p. 2a n.1, p. 6a.

Also, it should be noted that FIBA's recitation of how applications were made to FIBA for international licenses allowing Behagen to play "amateur" basketball,* Pet., p. 5, is hotly contested. Respondent does not concede, nor does the record reflect, the insulation of ABA/USA from the decisionmaking process.

Finally, FIBA repeatedly describes itself as "a German association" or "a German federation," Pet. pp. 8, 14. That description is plainly inaccurate. FIBA is an international organization that happens to have its headquarters in Germany, but it is not a German national and appears even to lack juridical personality in the Federal Republic, according to FIBA's own submissions below. *See* Pet., p. 10a.

All of these matters are means by which FIBA attempts to remove itself further from activities in the United States, and to clothe itself in foreign nationality and detachment. Yet the correct view remains that of the court of appeals: that FIBA acts continuously and substantially in the United States through its American member, ABA/USA, and that "it would not offend due process to require FIBA to defend a lawsuit wherever members conduct FIBA activities." Pet., p. 7a.

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* In the world of FIBA, "amateur" status does not mean or connote that an athlete is not paid. Indeed, many FIBA-licensed "amateurs" are paid quite handsomely.

ARGUMENT

There Is No Basis For Supreme Court Review Of The Tenth Circuit's Decision

Petitioner FIBA urges what it describes as two reasons for granting the requested writ, but in essence these reasons may be reduced to one: an alleged inconsistency between the Tenth Circuit's decision and this Court's opinion in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall,* —— U.S. ——, 104 S.Ct. 1868 (1984). A failure to follow binding precedent of this Court certainly is an adequate basis for issuance of a writ of certiorari. *Egan* v. *City of Aurora,* 365 U.S. 514 (1961); *cf.* Rule 17.1 of the Rules of this Court.

Far from acting inconsistently with the teachings of *Helicopteros, supra,* however, the court of appeals scrupulously applied the principles laid down in that case. That is, the court of appeals noted that jurisdiction over FIBA turns upon the "sufficiency" of the contacts between FIBA and Colorado. *Helicopteros, supra,* 104 S.Ct. at 1872; Pet., p. 5a. The court went on to find, after reviewing the evidence shown by Behagen to the trial court, that it "constitute[d] a prima facie showing that FIBA maintains continuous and substantial activity in Colorado through the actions taken on its behalf by its constituent, ABA/USA." Pet., p. 6a.

Thus, in Respondent's respectful submission, the court of appeals asked the right question—are Petitioner's contacts with the forum State continuous and substantial?—and arrived at the right answer—that they are. There is no inconsistency with any decision of this Court.

Petitioner purports to contrast FIBA's contacts with Colorado, on the one hand, with the petitioner's contacts with Texas in *Helicopteros, supra.* Pet., pp. 10-12. The problem with that comparison is that it is wholly inaccurate and selective in its description of what FIBA does, and where and how it does it. The involvement of FIBA with ABA/USA, and its activities in the forum State, are not "sporadic," Pet., p. 12; they are significant and systematic. According to the record before the court of appeals, they include at least the following.

FIBA's American member, ABA/USA:

1) sponsors foreign amateur basketball teams touring the United States, under FIBA's auspices;

2) insures that only FIBA-sanctioned referees are assigned to officiate at tour games;

3) sponsors United States teams touring abroad under FIBA's auspices;

4) administers FIBA regulations pertaining to the "transfer" of players (*i.e.* the reassignment of their nationality);

5) administers FIBA regulations pertaining to the reinstatement of players to amateur status (the regulations at issue in the underlying lawsuit);

6) recommends individuals to FIBA for registration as international referees, and handles the processing of applications;

7) administers FIBA regulations pertaining to the definition of amateur status;

8) participates in FIBA committees, including its Eligibility Committee;

9) reports to FIBA on the status of Americans who have FIBA documents allowing them to play "amateur" basketball overseas;

10) pays FIBA for the use of FIBA referees;

11) splits with FIBA the fees deriving from matches between amateur and professional teams;

12) pays expenses of U.S. teams at FIBA foreign tournaments and of U.S. delegates to FIBA meetings;

13) disseminates FIBA literature and materials in the United States; and

14) acts as FIBA's liaison with American individuals and sports organizations.

Furthermore, since the court of appeals rendered its decision, FIBA held its quadrennial world congress in connection with the Summer Olympics in Los Angeles. As host federation, ABA/USA would have been deeply involved in planning the meeting, and those activities would at least in part have been conducted by FIBA or on FIBA's behalf at ABA/USA's offices in Colorado.

There is no basis for challenge to the conclusion of the court below that these contacts are more than sufficient to meet the test set out in *Helicopteros, supra.* The contacts were of such a nature as well as of such quantities to satisfy the requirements of that case, as well as of *Perkins* v. *Benguet Mining Company,* 342 U.S. 437 (1952), a case also specifically considered by the court of appeals. Pet., p. 5a.

Nothing is added to Petitioner's argument by its contention that the decision below "extends *in personam* jurisdiction over foreign entities to a dangerous and unprecedented limit." Pet., pp. 13-15. It is merely a restatement of FIBA's views concerning the fairness of asking it to defend a lawsuit in Colorado.

Surely the court of appeals did *not* hold that a foreign association can be "snared by United States courts when it takes *any* action which in *any* way affects a United States citizen in *any* area of the world." Pet., p. 15. Rather the court held that this Petitioner is present in Colorado for purposes of the State long-arm statute, and that jurisdiction in Colorado courts over it would not offend "traditional notions of fair play and substantial justice." *International Shoe Company* v. *Washington*, 326 U.S. 310, 316 (1945).

That is all that the opinion below says. Such a holding is not inconsistent with any decision of this court.

CONCLUSION

For all of the foregoing reasons, Respondent Ronald Behagen respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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